



L. Porteous No. 1  
May 29, 2013  
No. S-122255  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

JANET MERLO

Plaintiff

and:

THE ATTORNEY GENERAL OF CANADA AND THE MINISTER OF  
JUSTICE OF BRITISH COLUMBIA

Defendants

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

AFFIDAVIT OF LISA PORTEOUS

I, Lisa Porteous of [REDACTED], Kelowna in the Province of British Columbia,  
MAKE OATH AND SAY THAT:

1. I am a Case Manager / Paralegal with the law firm Klein Lyons, counsel for the Plaintiff and, as such, have knowledge of the facts and matters deposed to in this affidavit. Where facts are not within my personal knowledge, I have stated the source of my information and I believe those facts to be true.
2. This Action is a proposed class proceeding concerning the alleged discrimination against, bullying of, and harassment of, female Members, Civilian Members, and Public Service Employees of the Royal Canadian Mounted Police, because they are women. Attached as Exhibit "A" is a copy of the Notice of Civil Claim.

### **Class Definition**

3. The proposed class definition is:
  - a. "All current and former female Members, Civilian Members, and Public Service Employees of the Royal Canadian Mounted Police resident in Canada ["Primary Class"]; and,
  - b. All persons who have a derivative claim on account of a family relationship with current and former female Members, Civilian Members and Public Service Employees of the Royal Canadian Mounted Police ["Derivative Class"]"

### **Identifiable Class**

4. In my role as Case Manager / Paralegal, I am responsible for tracking all inquiries received by Klein Lyons and our co-counsel, Watkins Professional Law Corporation ("Watkins Law"), in relation to this Action. I have communicated with each person who has contacted Klein Lyons. I have also been informed of inquiries received by Watkins Law by Sandy Zaitzeff and Nancy Erickson, lawyers at Watkins Law. Together, our two firms have been contacted by at least:

- a. 121 women resident in British Columbia,
- b. 35 women resident in Alberta,
- c. 14 women resident in Saskatchewan,
- d. 12 women resident in Manitoba,
- e. 46 women resident in Ontario,
- f. 7 women resident in Quebec,
- g. 4 women resident in New Brunswick,
- h. 15 women resident in Nova Scotia,
- i. 5 women resident in Newfoundland and Labrador,
- j. 8 women resident in the Yukon, Northwest or Nunavut Territories, and
- k. 15 women for whom we do not know their place of residence,

who claim that they were harassed or discriminated against during their tenure with the Royal Canadian Mounted Police. I have been in direct communication, by telephone or email, with the vast majority of these women. Of the women who have communicated with me and Watkins Law,

100 women are current Members, Civilian Members, or Public Service Employees of the Royal Canadian Mounted Police.

5. I reviewed the National Class Action Database on the Canadian Bar Association website, a repository for information about class actions across Canada, and have not found any proposed class actions against the Defendants with respect to the alleged discrimination against, bullying of, and harassment of, female Members, Civilian Members, and Public Service Employees of the Royal Canadian Mounted Police, because they are women. To the best of my knowledge, this is the only proposed class proceeding in Canada related to the alleged discrimination against, bullying of, and harassment of, female Members, Civilian Members, and Public Service Employees of the Royal Canadian Mounted Police, because they are women. I have seen and read media reports of individual lawsuits having been filed against Canada in respect of assault, discrimination and harassment of women employed by the RCMP.

6. This action was issued by Notice of Civil Claim on March 27, 2012. I am informed by Jason Murray that notice was immediately submitted to the Canadian Bar Association National Class Action Database in accordance with the British Columbia Practice Direction No. 5 RE: Class Proceedings, dated July 1, 2010. A copy of the pleading was then posted to the CBA national online website database.

7. I have no knowledge of how many women have served as Members, Civilian Members, and Public Service Employees of the Royal Canadian Mounted Police. I accessed the RCMP website at <http://www.rcmp-grc.gc.ca> on May 29, 2013 where I viewed a copy of the webpage attached as Exhibit "B". The webpage, entitled, "35th Anniversary of Female Regular Members in the RCMP" explains that "[t]oday, 3,755 of the RCMP's 11,726 women employees are regular members."

8. Other than the posting of the pleading on the CBA website and a posting on our firm's website, I am unaware of any formal notice of this class proceeding to prospective class members in British Columbia or elsewhere in Canada. This class proceeding has generated

significant media interest and has been the subject of news reports on television, radio and newspapers.

### **Experience of Class Counsel**

9. Klein Lyons has offices in Vancouver and Toronto and is one of Canada's leading class action law firms. We have represented plaintiffs in over 20 certified class actions in a range of categories in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Newfoundland & Labrador. Our firm has acted in a number of prominent institutional and government negligence class actions including Woodlands School (*Richard v. British Columbia*), Alberta Child Welfare (*T.L. v. Alberta (Child, Youth and Family Enhancement Act, Director)*), Hepatitis C Tainted Blood (*Killough v. The Canadian Red Cross Society*), Maple Ridge Flood (*Pauche v. British Columbia Hydro & Power Authority*), Newfoundland and Labrador Breast Cancer Testing (*Doucette v. Eastern Regional Integrated Health Authority*), and Labrador Hospital Sterilization (*Rideout v. Health Labrador Corporation*).

10. Klein Lyons is assisted in this case by co-counsel Watkins Law Professional Corporation of Thunder Bay, Ontario.

### **The Litigation Plan**

11. We have developed a proposed litigation plan for the conduct of this action which is based on litigation plans that have been approved by the Court in other certified class actions. Klein Lyons was class counsel in the certified class proceedings *Fakhri v. Alfafa's Canada Inc.* 2003 BCSC 1717, *Ruddell v. BC Rail Ltd.* 2005 BCSC 1504, *Lieberman and Morris v. Business Development Bank of Canada*, 2006 BCSC 242, *Chalmers v. AMO Canada Company*, 2009 BCSC 689, and *Jones v. Zimmer GMBH*, 2011 BCSC 1198. The litigation plans approved by the Honourable Madam Justice Gerow in *Fakhri*, the Honourable Mr. Justice Holmes in *Ruddell* and the Honourable Mr. Justice Davies in *Lieberman*, the Honourable Mr. Justice Butler in *Chalmers*, and the Honourable Mr. Justice Bowden in *Jones* are attached as Exhibits "C", "D", "E", "F" and "G", respectively.

12. Attached as Exhibit "H" is the litigation plan approved in the certified class proceeding, *MacKinnon v. National Money Mart Company*, 2007 BCSC 348 which was attached to the decision of the Honourable Madam Justice Brown as Schedule "B".

13. The proposed litigation plan for this action is attached to my affidavit as Exhibit "I".

### Notice

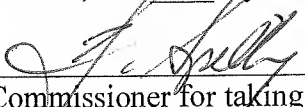
14. The proposed litigation plan includes a plan for giving notice to the class in the event that this action is certified as a class action.

### Representative Plaintiffs

15. I am not aware of any conflict of interest between the interests of the proposed representative plaintiff and the proposed class.

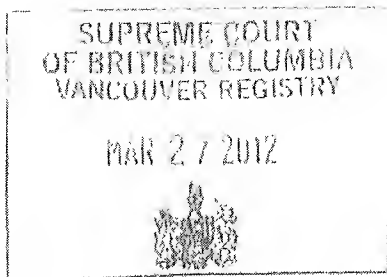
16. I swear this affidavit in support of the Plaintiffs' application that this action be certified as a class proceeding and for no improper purpose.

SWORN BEFORE ME at the City of  
Kelowna, in the Province of British  
Columbia, this 09 day of May, 2013.

  
A Commissioner for taking oaths in and  
for the Province of British Columbia

**DANIEL E. SPELLISCY**  
Barrister & Solicitor  
Witnessed as to  
execution only; advice  
neither sought nor given.

  
Lisa Porteous



This is Exhibit " A " referred to in the  
affidavit of Lisa Porteous  
sworn before me, this 24  
day of May 2013

No. S-12 22 55  
Vancouver Registry

In the Supreme Court of British Columbia  
**DANIEL E. SPEELSON**  
Barrister & Solicitor

Between

Janet Merlo

Plaintiff

and

The Attorney General of Canada and the Minister of  
Justice of British Columbia

Defendants

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

### NOTICE OF CIVIL CLAIM

**This action has been started by the plaintiff(s) for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

**JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL** to file the response to civil claim within the time for response to civil claim described below.

#### **Time for response to civil claim**

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,

- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

### CLAIM OF THE PLAINTIFF(S)

#### Part 1: STATEMENT OF FACTS

##### Overview

1. The Plaintiff brings this action on her own behalf, and on behalf of a proposed class of similarly situated persons ("Class Members") to be defined in the Plaintiff's application for class certification.
2. The Plaintiff also brings this action on behalf of each person who, by reason of his or her relationship to a Class Member is entitled to make claims under any of the Dependent Statutes as a result of injury to the Class Member (the "Family Class");
3. "Member" and "Civilian Member" in this Notice of Civil Claim are as defined in the *Royal Canadian Mounted Police Act*, R.S.C., c. R-9 ("*RCMP Act*") and *Royal Canadian Mounted Police Regulations*, 1988, S.O.R./88-361 ("*RCMP Regulations*"). "Public Service Employees" are members of the federal public service hired under s. 10 of the *RCMP Act* for support within the Royal Canadian Mounted Police ("*RCMP*").
4. "Dependants Statutes" in this Notice of Civil Claim means the: *Fatal Accidents Act*, R.S.A. 2000, c. F-8; *Tort-Feasors Act*, R.S.A. 2000, c. T-5; *Fatal Accidents Act*, R.S.S. 1978, c. F-11; *Fatal Accidents Act*, C.C.S.M. c. F50; *Family Law Act*, R.S.O. 1990, c. F.3; *Civil Code of Québec*, S.Q. 1991, c. 64; *Fatal Accidents Act*, R.S.N.B. 1973, c. F-7; *Fatal Accidents Act*, R.S.P.E.I. 1988, c. F-5; *Fatal Injuries Act*, R.S.N.S. 1989, c. 163; *Fatal Accidents Act*, R.S.N.L. 1990, c. F-6; *Fatal Accidents Act*, R.S.N.W.T. (Nu) 1988, c. F-3; *Fatal Accidents Act*, R.S.N.W.T. 1988, c. F-3); and the *Fatal Accidents Act*, R.S.Y. 2002, c. 86.
5. This action concerns discrimination against, bullying of, and harassment of, female Members, Civilian Members, and Public Service Employees, because they are

women. The Plaintiff alleges that she and fellow female Members, Civilian Members and Public Service Employees were subject to gender-based discrimination, bullying and harassment. She further alleges that the RCMP failed to exercise the duty to women in the RCMP to ensure that they could work in an environment free of gender-based discrimination, bullying and harassment.

### **The Parties**

6. The Plaintiff, Janet Merlo, was at all material times a peace officer, servant and employee of the RCMP pursuant to s. 7(1) of the *RCMP Act*. At all material times, Ms. Merlo held the rank of Constable and resided in the Province of British Columbia. Ms. Merlo currently resides in British Columbia.

7. The Defendant, the Attorney-General of Canada, represents the Crown and RCMP in this proceeding pursuant to the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50 s. 23 (the "*Crown Liability Act*"). The Crown's liability arises from the conduct, negligence, malfeasance and vicarious liability of the RCMP and individuals who were at all material times Crown employees, agents and servants.

8. The Defendant Minister of Justice (the "Minister") is named in this proceeding pursuant to the *Police Act*, R.S.B.C. 1996, c. 367, s. 11 and 21 and O.I.C. 51/2012. The Minister's liability arises from the conduct, negligence, malfeasance and vicarious liability of individual provincial constables in the course of their duties in British Columbia.

### **The Plaintiff, Janet Merlo**

9. Janet Merlo served in the RCMP as a Constable from March 1, 1991 to March 24, 2010. Ms. Merlo was stationed at the Nanaimo Detachment from September 1991 through March 2010.

10. Ms. Merlo was subject to persistent and ongoing gender-based discrimination and harassment by individual male Members during the time she served as a Constable. Non-exhaustive examples of such discrimination and harassment are described in paragraphs

11 through 26 herein.

11. Ms. Merlo arrived at the Nanaimo RCMP Detachment in or about September 1991.

12. Starting in or about 1992, male Members at the Nanaimo Detachment began to make false statements to Ms. Merlo's boyfriend, and later spouse, Wayne Merlo, that the male Members had engaged in sexual relations with Ms. Merlo. The supervising Corporal on Ms. Merlo's night shift watch commented to Wayne Merlo words to the effect "Janet is perfect... Janet is the right height because you can lay a six-pack of beer on her head while she gives you a blow job."

13. Starting in or about late 1991 it became common for the supervising Corporal on Ms. Merlo's night shift watch to position an inflatable naked female doll next to his desk at the Detachment while on duty. On more than one occasion, the supervising Corporal invited Ms. Merlo to stand next to the doll. The Corporal's supervisor was aware of the doll and the comments, but did not reprimand the Corporal.

14. In the Spring of 1992, Ms. Merlo became pregnant with her first child. When Ms. Merlo advised the RCMP that she was pregnant she was called into the office of her supervising Operations Non-Commissioned Officer. He displayed his anger with her and repeatedly yelled at Ms. Merlo words to the effect: "What the hell am I supposed to do with you now?" He yelled at her across his desk words to the effect: "You had better get your priorities straight. You are either going to have a career in the RCMP, or you are going to pop out kids your whole life." He continued: "I have a suggestion for you: next time, keep your fucking legs closed." Ms. Merlo left the detachment in tears, feeling sick to her stomach.

15. In or about August 1992, while still pregnant, Ms. Merlo began to work in the Crime Prevention Office of the Nanaimo Detachment. It was very common for Ms. Merlo to receive comments from male Members who were her supervisors and peers that targeted Ms. Merlo as a woman. On one occasion, a male Member spoke words to the effect: "It's busy today out there. Janet could take some calls if she wasn't knocked up."

16. After Ms. Merlo returned from maternity leave in or about July 1993, she continued to receive comments from male Members who were her supervisors and peers that targeted Ms. Merlo as a woman. On one occasion, a male Member spoke words to the effect: "Janet, can you take that call, or are you pregnant again?" The targeted comments from her male supervisors and peers were so pervasive and came from so many male Members that Ms. Merlo tried to numb herself to them because she felt resistance to be futile.

17. In or about April 1995 two male Members in the Nanaimo Detachment, a Sergeant and Constable discussed female applicants for the newly formed bicycle patrol unit within obvious earshot of Ms. Merlo. The Constable spoke words to the effect: "yeah, like there are any of the ugly fat assed female members in this building that can peddle a bike around all day."

18. In or about February 1997, a document was left in Ms. Merlo's Detachment mail slot entitled "Training Courses Now Available for Women". The list comprised thirty-four fictional courses that were derogatory to women.

19. Starting in June 2000, Ms. Merlo and other female Members of the Nanaimo Detachment were subject to overtly sexual comments by the Sergeant of "B" Watch. On one occasion, the Sergeant brandished a dildo that had been seized as evidence in a criminal investigation and yelled across the Nanaimo Detachment office words to the effect: "Merlo, what the hell happened? This thing was brand new yesterday. Now it's almost worn out. Did you take it home last night?"

20. On a separate occasion, the Sergeant of "B" Watch publicly targeted Ms. Merlo as a woman. At a watch briefing where a male Member arrived late the Member explained that he was waiting for his babysitter to arrive before he could leave home. The Sergeant replied with words to the effect: "Send Merlo out to the house and do the women's work so that men could be on time and do the real work."

21. While Ms. Merlo was assisting the Sergeant of "B" Watch with a prisoner in the Detachment cell block, the Sergeant cut his thumb on handcuffs. The Sergeant then pointed

to his genital area and said to Ms. Merlo words to the effect: "When I cut my finger, my hand was down there in my pocket. Would you like to go down there and kiss all of that better while you're at it?"

22. On a separate occasion, the Sergeant of "B" Watch removed a section of hose from the Detachment vacuum cleaner and left it in Ms. Merlo's RCMP file cubby. The Sergeant said to Ms. Merlo words to the effect: "It's long, black and thick, and you can take it home and have fun with it." Shortly thereafter, Ms. Merlo found a black rubber dildo in her files at the Detachment.

23. On various separate occasions, the Sergeant of "B" Watch made overtly sexual comments to Ms. Merlo, including offers to rub Ms. Merlo's breast, offering to search Ms. Merlo's front pocket to search for change while putting his own hands near his groin, offering to give Ms. Merlo his "big Italian salami", and asking if she "like(s) it on top?"

24. On numerous occasions Ms. Merlo was witness to male Members loudly commenting on the breasts of female prisoners held at the Detachment.

25. On more than one occasion, Ms. Merlo's supervisors falsely advised Ms. Merlo that she was ineligible to collect acting pay for times she served as Acting Corporal at the Detachment. Ms. Merlo was out of time to apply for this extra pay when she later learned that she was entitled to it.

26. At all material times, men and women were treated differently within the Nanaimo Detachment. Examples include:

- (a) Men were permitted to leave on night shifts to play three-hour hockey games while still on shift while, in contrast, female Members were denied the opportunity to participate in aerobics classes during their lunch breaks;

- (b) Male Members were more easily accommodated with shift changes and transfers; and

- (c) Male Members were more easily accommodated when requesting sick leave while, in contrast, female Members were routinely questioned over their state

of health when requesting sick leave.

27. On many occasions Ms. Merlo would take sick days because she was upset about the ongoing discrimination and harassment she faced. She felt too physically ill to attend work. On other occasions, Ms. Merlo would start work early in order to give herself time to prepare for dealing with the ongoing harassment.

28. On many occasions Ms. Merlo complained to Members, including her superiors and the Commissioner of the RCMP, that she was suffering gender-based discrimination and harassment by individual male Members. On occasion, the Members to whom she complained advised Ms. Merlo to "forget about it" or to "walk away." On other occasions, Ms. Merlo's complaints were investigated and dismissed.

29. Ms. Merlo was discharged from the RCMP on or about March 24, 2010.

30. Ms. Merlo was unable to bring an action in respect of her injury, damage or loss as a consequence of the symptoms of depression and post-traumatic stress disorder that she suffered as a result of ongoing discrimination and harassment by individual male Members of the RCMP. Ms. Merlo's interests and circumstances were so serious that she could not reasonably bring an action until December 2011.

### **RCMP Negligence**

31. At all material times, the RCMP owed a duty of care to the Plaintiff and Class Members to ensure that the Plaintiff and Class Members could work in an environment free of gender-based discrimination and harassment.

32. The RCMP breached the aforementioned duty by, among other things:

- (a) failing to properly supervise its employees, agents or servants;
- (b) failing to have and implement adequate legislation, policies, procedures, codes of conduct and guidelines to ensure the Plaintiff's and Class Members' safety, health and welfare and to minimize the risk of her being subjected to gender-based discrimination and harassment; and

- (c) failing to properly investigate allegations of gender-based workplace discrimination and harassment, in a thorough, timely and impartial manner.

33. In the alternative, if RCMP policies, procedures, codes of conduct and guidelines were adequate to ensure that the Plaintiff and Class Members could work in an environment free of gender-based discrimination and harassment, which is not admitted but is specifically denied, then the RCMP breached its duties to the Plaintiff and Class Members by failing or neglecting to implement those policies, procedures, codes of conduct and guidelines.

#### **Breach of Contract**

34. The RCMP entered into a contract in writing, or in the alternative, a contract made orally or partly in writing, or in the further alternative, a contract made orally, for the purposes of employing the Plaintiff and Class Members under the *RCMP Act*.

35. It was an express or implied term of the employment contract that the RCMP would provide the Plaintiff and Class Members with a work environment free of gender-based discrimination and harassment and that any such conduct would be investigated, and the safety of the workplace for the Plaintiff and Class Members be provided in accordance with applicable legislation, policies, procedures, codes of conduct and guidelines.

36. The RCMP breached the aforementioned contractual term by, among other things:

- (a) failing to have and implement adequate legislation, policies, procedures, codes of conduct and guidelines to ensure the Plaintiff's and Class Members' safety, health and welfare and to minimize the risk of their being subjected to gender-based discrimination and harassment; and
- (b) failing to properly investigate allegations of gender-based workplace discrimination and harassment, in a thorough, timely and impartial manner.

#### **Breach of Canadian Charter of Rights and Freedoms**

37. The RCMP has breached the Plaintiff's and Class Members' right to be free from discrimination on the basis of sex, pursuant to s. 15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11 by, among other things:

- (a) failing to properly supervise its employees, agents or servants;
- (b) failing to have adequate legislation, policies, procedures, codes of conduct and guidelines to ensure the Plaintiff's and Class Members' safety, health and welfare and to minimize the risk of her being subjected to gender-based discrimination and harassment; and
- (c) failing to properly investigate allegations of gender-based workplace discrimination and harassment, in a thorough, timely and impartial manner.

38. In the alternative, if RCMP policies, procedures, codes of conduct and guidelines were adequate to ensure that the Plaintiff and Class Members could work in an environment free of gender-based discrimination and harassment, which is not admitted but is specifically denied, then the RCMP breached the Plaintiff's and Class Members' *Charter* rights by failing or neglecting to implement those policies, procedures, codes of conduct and guidelines.

#### **RCMP Member and Employee Negligence**

39. At all material times, certain individuals who were Members, Civilian Members and Public Service Employees and who were each Crown employees, agents and servants (the "Negligent Individuals") owed a duty of care to the Plaintiff and Class Members to ensure that they could work in an environment free of gender-based discrimination and harassment.

40. Section 37 of the *RCMP Act* makes it incumbent on every Member and Civilian Member to, among other things:

- (a) respect the rights of all persons;
- (b) to maintain the integrity of the law, law enforcement and the administration of justice;
- (c) to perform the member's duties promptly, impartially and diligently, in accordance with the law and without abusing the member's authority;
- (d) to ensure that any improper or unlawful conduct of any member is not concealed or permitted to continue;
- (e) to act at all times in a courteous, respectful and honourable manner; and
- (f) to maintain the honour of the RCMP and its principles and purposes.

41. The Code of Conduct established by regulation under s. 38 of the *RCMP Act* requires Members and Civilian Members to, among other things, respect the rights of every person. The Plaintiff pleads and relies upon the *RCMP Regulations*, ss. 38 to 58.7.

42. The Negligent Individuals breached the aforementioned duties by, among other things:

- (a) pursuing practices that deprived or tended to deprive the Plaintiff and Class Members of employment opportunities on the basis that the Plaintiff and Class Members are women;
- (b) failing or neglecting to adhere to the appropriate legislation, policies, procedures, codes of conduct and guidelines in respect of gender-based workplace discrimination and harassment;
- (c) failing to properly investigate allegations of gender-based workplace discrimination and harassment in a thorough, timely and impartial manner;
- (d) failing or neglecting to exercise their authority to put an end to the conduct of gender-based discrimination and harassment;

- (e) failing to adhere to s. 37 of the *RCMP Act*;
- (f) failing to hold accountable those found to be in breach of the applicable legislation, policies, procedures, codes of conduct and guidelines;
- (g) failing to properly supervise Members, Civilian Members and Public Service Employees; and,
- (h) harassing the Plaintiff and Class Members because they are woman.

43. The conduct that the Negligent Individuals directed toward the Plaintiff and Class Members was repetitive and extreme and calculated to harass the Plaintiff and Class Members. As a result of the conduct the Plaintiff and Class Members suffered mental and physical injury particularized in paragraph 46.

44. The Negligent Individuals knew or ought to have known that the conduct was of a kind reasonably capable of terrifying a normal person. In particular, the Negligent Individuals knew or ought to have known that their conduct would:

- (a) harm;
- (b) offend;
- (c) demean;
- (d) belittle;
- (e) humiliate;
- (f) embarrass;
- (g) petrify;
- (h) terrify;
- (i) intimidate; and/or

(j) threaten;

another person or persons in the workplace.

45. In the alternative, the Negligent Individuals knew or ought to have known that the Plaintiff and Class Members are especially sensitive, susceptible and vulnerable to injury through mental distress and their conduct.

### **Injury and Damage**

46. As a result of the breach of contract by the RCMP and the fault and negligence of the RCMP and the Negligent Individuals, the Plaintiff and Class Members have sustained serious injuries and consequences, including:

- (a) post-traumatic stress disorder;
- (b) diminished self-worth;
- (c) diminished ability to concentrate;
- (d) repeated and ongoing nightmares;
- (e) depression;
- (f) anxiety;
- (g) difficulty in coping with emotional stress;
- (h) suicidal ideation;
- (i) attempted suicide;
- (j) feelings of guilt, responsibility, and self-blame;
- (k) nervous shock;
- (l) emotional anguish;

- (m) insomnia;
- (n) irritable bowel syndrome;
- (o) failed relationships;
- (p) loss of consortium; and
- (q) loss of enjoyment of life.

47. These injuries have caused and continue to cause the Plaintiff and Class Members pain, suffering, loss of enjoyment of life, permanent disability, loss of physical, mental and emotional health, and loss of earnings, past and prospective.

48. These injuries aggravated or exacerbated earlier injuries such that they are impossible to separate.

49. As a further result of the breach of contract by the RCMP and the negligence of the RCMP and the Negligent Individuals, the Plaintiff and Class Members have sustained certain special damages and loss and expenses for medical and psychological treatment. The Plaintiff and Class Members continue to undergo medical and psychological care and treatment and to incur loss and expense.

50. As a result of the breach of contract by the RCMP and the negligence of the RCMP and the Negligent Individuals, members of the Family Class have sustained injury, loss and damages as described in paragraphs 46 to 49 above.

## **Part 2: RELIEF SOUGHT**

51. The Plaintiff claims, on her own behalf and on behalf of a class of similarly situated persons, as follows:

- (a) an order certifying this action as a class proceeding and appointing her as representative plaintiff under the *Class Proceedings Act*;
- (b) general damages and special damages;

- (c) exemplary and punitive damages;
- (d) damages pursuant to the *Canadian Charter of Rights and Freedoms*, s. 24(1);
- (e) pre-judgment interest;
- (f) recovery of health care costs incurred by the Ministry of Health Services on their behalf pursuant to the *Health Care Cost Recovery Act*, S.B.C. 2008, c.27, and comparable legislation in the other provinces and territories;
- (g) costs; and
- (h) such further and other relief as this Honourable Court may deem just.

### **Part 3: LEGAL BASIS**

52. The Plaintiff pleads and relies upon the *Class Proceedings Act*, R.S.B.C. 1996, c. 50.

#### **Standard of Care**

53. The standard of care owed by the "Negligent Individuals" to the Plaintiff and Class Members is informed by, among other things, the *RCMP Act* and the Code of Conduct established by regulation under s. 38 of the *RCMP Act*.

#### **Punitive Damages**

54. The actions of the RCMP and the Negligent Individuals were reckless, arrogant, high-handed and abusive and showed a callous disregard for the Plaintiff's and other Class Members' rights. The RCMP and the Negligent Individuals have engaged in conduct that is reprehensible and deserves punishment. The Plaintiff, therefore, seeks punitive and exemplary damages against the Defendants.

#### **Family Class**

55. As a result of the negligence of the RCMP and the Negligent Individuals, members of the Family Class have suffered and will continue to suffer loss and damage.

Such loss and damage was foreseeable by the Defendants. Particulars of the loss and damage include loss of guidance, care and companionship, loss of income and loss of value of services as a result of the injury to the primary claimant, and expenses incurred as a result of the injury to the primary claimant.

#### **Government Liability for Negligence of RCMP Members**

56. The Crown is vicariously liable for torts committed by Members, Civilian Members and Public Service Employees in the course of their duties. The Plaintiff pleads and relies upon the *Crown Liability and Proceedings Act*, ss. 3 and 36.

57. The Minister is jointly and severally liable for torts committed by Members in the course of their duties in British Columbia. The Plaintiff pleads and relies upon the *Police Act*, ss. 11 and 21.

#### **Quebec Law**

58. Where the actions of the RCMP and the Negligent Individuals took place in Quebec, they constitute:

- (a) fault giving rise to the extra-contractual liability of the Negligent Individuals towards the Plaintiff, Class Members, and Family Class, pursuant to the *Civil Code of Québec*, S.Q. 1991, c. 64, Art. 1457, and the *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12 (the "*Quebec Charter*"), ss. 1, 4, 10, 10.1 and 16;
- (b) fault giving rise to the extra-contractual liability of the RCMP pursuant to the *Crown Liability and Proceedings Act*, s.3, and the *Interpretation Act*, R.S.C. 1985, c. I-16, s. 8.1; and
- (c) unlawful and intentional interference with the rights of the Plaintiff and Class Members under the *Quebec Charter*, ss. 1, 4, 10, 10.1 and 16, giving rise to the liability of the RCMP to pay punitive damages to the Plaintiff and Class Members, pursuant to the *Quebec Charter*, s. 49 and the *Civil Code of Québec*, Art. 1621.

59. Where the actions of the RCMP and the Negligent Individuals took place in Quebec, the Plaintiff and Class Members have been unable to act within the meaning of the *Civil Code of Québec*, Art. 2904.

Plaintiffs' address for service: c/o Klein Lyons  
400 - 1385 West 8th Avenue  
Vancouver, BC V6H 3V9


Fax number address for service (if any): (604) 874-7180

E-mail address for service (if any):

Place of trial: Vancouver

The address of the registry is: 800 Smithe Street  
Vancouver, BC V6Z 2E1

Date: March 26, 2012

  
Signature of  
[ ] plaintiff [x] lawyer for plaintiffs

David A. Klein  
Sandy Alexander Zaitzeff

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
- (a) prepare a list of documents in Form 22 that lists
    - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    - (ii) all other documents to which the party intends to refer at trial, and
  - (b) serve the list on all parties of record.

#### APPENDIX

*[The following information is provided for data collection purposes only and is of no legal effect.]*

#### Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This action concerns discrimination against, bullying of, and harassment of, female Members, Civilian Members, and Public Service Employees, because they are women. The Plaintiff alleges that she and fellow female Members, Civilian Members and Public Service Employees were subject to gender-based discrimination and harassment. She further alleges that the RCMP failed to exercise the duty to the women in the RCMP to ensure that they could work in an environment free of gender-based discrimination and harassment.

**Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

A personal injury arising out of:

- ☐ a motor vehicle accident
- ☐ medical malpractice
- ☒ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☐ a matter not listed here

**Part 3: THIS CLAIM INVOLVES:**

- ☒ a class action
- ☐ maritime law
- ☐ aboriginal law
- ☐ constitutional law
- ☐ conflict of laws
- ☐ none of the above

[ ] do not know

**Part 4:**

1. *Class Proceedings Act*, R.S.B.C. 1996, c. 50.
2. *Royal Canadian Mounted Police Act*, R.S.C., c. R-9.
3. *Royal Canadian Mounted Police Regulations, 1988*, S.O.R./88-361.



Royal Canadian Mounted Police  
Gendarmerie royale du Canada

This is Exhibit " B " referred to in the  
affidavit of Lisa Porteous  
sworn before me, this 29<sup>th</sup>  
day of May, 2013

DANIEL E. SPELLISCY  
Barrister & Solicitor

Canada

[Home](#) > [History](#) > 35th Anniversary of Female Regular Members in the RCMP

## 35th Anniversary of Female Regular Members in the RCMP

### Making "her-story"

On September 16, 2009, the RCMP commemorates 35 years of female regular members in the Force.

On May 23, 1974, RCMP Commissioner M.J. Nadon announced the RCMP would begin accepting applications from women for regular police duties in areas and positions previously reserved for males.

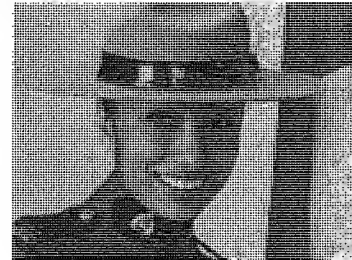
The first troop of 32 female regular members (Troop 17) arrived at the RCMP Academy ("Depot" Division) on September 16, 1974, to commence training. Ranging in age from 19 to 29 and representing all provinces with the exception of Prince Edward Island, this first all-female troop graduated from "Depot" on March 3, 1975.

### Roles and role models

Throughout the RCMP's 136-year history, women have made significant contributions to the RCMP, serving as public servants, civilian members and as regular members.

Women employees have always been integral to the mandate and functioning of the RCMP. As early as the 1890s, the Force employed women as matrons and gaolers to deal with female offenders and as part of the escort when female prisoners were moved from one place to another.

In the early 1900s, women filled positions such as fingerprint technicians and lab technicians. Dr. Francis McGill, often referred to as the "First Woman Mountie", was the Force's first Honourary Surgeon appointed in 1946 but she had been the director of the Saskatchewan lab from 1922 to 1942 and associated with the Force for many years in the fields of medical science, forensic medicine and pathology.



#### QUICK FACTS

- March 3, 1975: The first all-female troop of regular members graduates from "Depot".
- Today, 3,755 of the RCMP's 11,726 women employees are regular members.
- From Constable to Commissioner, anything is possible for women who join as regular members of the RCMP today.

## Leading the way

Since 1975, women have made considerable progress in the RCMP. For example, in 1981 the first female was promoted to Corporal and the first females served on the Musical Ride; in 1987, the first female served in a foreign post; in 1990, the first female was appointed Detachment Commander; in 1992, the first female officers were commissioned; and in 1998, the first female Assistant Commissioner was appointed. On December 16, 2006, Beverley Ann Busson (an original member of Troop 17 [1974]) was appointed the 21st Commissioner of the RCMP.

Date Modified: 2009-09-11

This is Exhibit "C" referred to in the  
affidavit of Lisa Porteous  
sworn before me, this 29<sup>th</sup>  
day of March 2003

No. L023298  
Vancouver Registry

DANIEL E. SPELLISCY  
Barrister & Solicitor

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

HELEN FAKHRI and ADY AYLON

Plaintiffs

AND:

ALFALFA'S CANADA, INC.  
Carrying on business as  
CAPERS COMMUNITY MARKETS

Defendant

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

## PLAINTIFFS' PROPOSED PLAN FOR THE PROCEEDING

### INTRODUCTION

1. The *Class Proceedings Act*, R.S.B.C. 1996, c.50, requires that a workable plan be put in place as part of the certification process. The solicitors for the Plaintiffs in this action propose that the final Plan involve input by the solicitors for the Defendant and this Honourable Court. The Plaintiffs propose the following draft Plan for the Proceeding, subject to the issues of scheduling and appeals.

### STAGE 1

#### Procedures Prior to Certification

2. On February 11, 2003, the Honourable Madame Justice Gerow set the following pre-certification schedule:

- a) The Defendant will file and serve its Statement of Defence by March 11, 2003.
- b) The Plaintiffs will deliver their Notice of Motion for Certification and supporting affidavit(s) by April 15, 2003.

- c) The Defendant will deliver its affidavit(s) in response to the Plaintiffs' certification application by May 20, 2003.
- d) Both parties will complete cross-examinations, if any, of deponents by June 24, 2003.
- e) The Plaintiffs will serve their certification argument by July 29, 2003.
- f) The Defendant will serve its certification argument by September 2, 2003.
- g) The Plaintiffs will serve their reply to the Defendant's certification argument by September 23, 2003.
- h) The certification hearing is set for three days commencing on October 20, 2003.

## **STAGE 2**

### **Procedures After Certification**

#### *Notice to Class Members*

3. Pursuant to section 19 of the *Class Proceedings Act*, notice that a proceeding has been certified as a class proceeding must be given to class members. The Plaintiffs propose that, by a date to be set by the Court, the proposed Notice of Certification (Appendix "A" to this Plan), be given to the class members by the following means:

- a) Counsel for the Plaintiffs will keep a database of all potential class members who contact them. Upon certification, the Notice of Certification, Opt Out Form, and Opt In Form will be sent to these people.
- b) The Defendant will prominently display the Notice of Certification at its retail outlets at 2285 West 4th Avenue, Vancouver, 1675 Robson Street, Vancouver, and 2496 Marine Drive, West Vancouver.
- c) The Defendant will place an advertisement in a form to be agreed upon by the parties (or if the parties cannot agree, in a form ordered by the Court) in the Vancouver Sun and in the Vancouver Province. In the Vancouver Sun, the advertisement will run on Wednesday and Saturday, each week for three consecutive weeks. In the Vancouver Province, the advertisement will run on Wednesday and Sunday each week for three consecutive weeks.
- d) The Defendant will bear the cost of publishing the advertisements.
- e) The Notice to Class Members, Opt Out Form and Opt In Form will be posted on class counsel's web site: [www.kleinyons.com](http://www.kleinyons.com).

4. The Plaintiffs propose that these steps be completed within 60 days after the certification Order.

*Deadline to Opt Out*

5. Persons who are resident in British Columbia on the date of certification and who wish to opt out of this class proceeding may do so by delivering the Court approved Opt Out Form to class counsel on or before a date to be set by the Court.

*Deadline to Opt In*

6. Persons who are not resident in British Columbia on the date of certification and who wish to opt in to this class proceeding may do so by delivering the Court approved Opt In Form to class counsel on or before a date to be set by the Court.

*Case Management Hearings*

7. The Plaintiffs propose that case management hearings be scheduled before the Honourable Madame Justice Gerow on a regular basis to deal with pre-trial scheduling matters and interlocutory applications.

*Interlocutory Motions*

8. The Plaintiffs propose that all interlocutory motions be made before the Honourable Madame Justice Gerow. All material in support of interlocutory applications, including written submissions, shall be served, exchanged, and filed in accordance with Rule 51A of the *Rules of Court*.

*Document Production*

9. Each party will initiate document production by delivering to the other party a List of Documents. Both parties will deliver a List of Documents within 30 days of the certification Order. Each party will then request copies of whatever documents they require from the other party's List. Each party will deliver all documents within 60 days of the request. If a party claims privilege over a document(s) and the other party challenges that privilege, the hearing to determine the issue will be held as soon as practical, subject to the Court's availability.
10. The Plaintiffs submit that this Honourable Court should specify the following procedures for documentary productions:
- a) Each page of each document disclosed by the parties shall have its own consecutive "Bates number".
  - b) The parties shall each use "Summation" or otherwise compatible document management software for the production of their respective Lists of Documents.

- c) The parties shall exchange electronic copies of their respective Lists of Documents in a Summation compatible format. That is, each List should have an electronic index of all Schedule A documents disclosed. The index should provide sufficient description to identify each document disclosed, including the date(s) of the document, the nature of the document, the tab and Bates number range of the document, its author(s) and recipient(s), and any attachments. The index shall be organized in logical fashion, such as chronologically. Along with the index, the parties shall exchange electronic copies of all documents listed in Schedule A of their List of Documents in Summation compatible, scanned form, on CD-ROMs. The scanned documents shall be electronically cross-referenced back to the index such that any person operating Summation may click on an item listed in the index and then be able to view an electronic copy of the document referenced.
- d) The parties shall each make the original copies of the documents listed in Schedule A of the List of Documents available for inspection by the opposing party upon reasonable notice.
- e) The parties shall each bear their own costs of preparing their own respective electronic List of Documents and shall provide the opposing party with a Summation compatible electronic copy of their List of Documents and scanned Schedule A documents at no charge to the other side.

#### *Examination for Discovery*

11. The Plaintiffs anticipate that the Examination for Discovery of the Defendant will require approximately 10 days subject to refusals and undertakings. Examinations for Discovery will be completed within 6 months of the certification Order.

#### *Exchange of Expert Opinions/Case Management/Common Issues Trial*

12. Expert opinions will be exchanged within 12 months of the Certification Order. Following the exchange of expert opinions, the Plaintiffs intend to attend before the Court to clarify and/or redefine the common issues. Also at this Case Management Hearing both parties will submit a detailed written estimate of the length of the trial of the common issues. Following a determination of the trial length, the Plaintiffs submit that the trial of the common issues be scheduled to begin as soon as the Court's availability permits.

#### *Individual Issues Determination*

13. If any or all of the common issues are resolved in favour of the class and judgment is pronounced for the Plaintiffs, the Plaintiffs propose that a case management hearing be held as soon as possible following judgment. At that hearing, both parties will be at liberty to make submissions regarding the methodology for resolving the remaining issues. Potential methods include, mini-trials, mediation, arbitration or other means approved by the Court pursuant to section 27 to 34 of the *Class Proceedings Act* ("CPA").

14. The proposed class is comprised of two groups of individuals: those who were infected with Hepatitis A (the "Infected Class") and those who were not infected but received an ISG immunization as a precautionary measure against infection (the "Immunized Class"). Members of the Immunized Class will comprise the vast majority of the total plaintiff class. The claims of persons in the Immunized Class will likely be modest, ranging from a few hundred to a few thousand dollars each. It will therefore be necessary to design procedures which are fair to both parties, and which are appropriate to the value of the individual claims asserted. The procedures adopted must not be so costly that they make the modest claims of consumers uneconomic, thereby insulating the defendant from liability and defeating the purpose of class actions.

15. If the Plaintiffs succeed at the common issues trial, the Plaintiffs will then ask the trial judge to establish an individual claims determination process pursuant to s. 27(3) of the *CPA*, and to appoint a referee ("Referee") to manage that process pursuant to s. 27(1)(b) of the *CPA*.

16. Because of the differences in the nature and quantum of the claims of members of the Infected Class and of the Immunized Class, the Plaintiffs propose that different damage assessment procedures be used for the claims.

17. For individual claims where the class member is claiming \$10,000 or more, the Plaintiffs propose that the claim be adjudicated by the Referee using the British Columbia Supreme Court Rules of Practice regarding discovery and trial procedure.

18. For individual claims where the class member is claiming more than \$3,000 but less than \$10,000, the Plaintiffs propose that the claim be adjudicated by the Referee using the British Columbia Small Claims Court Rules regarding discovery and trial procedures.

19. For individual claims where the class member is claiming \$3,000 or less, the Plaintiffs propose that the claim be proved by Affidavit in a standardized format to be approved by the Court. The Affidavit will describe the nature of the claim, attach proof of class membership, and attach receipts for any special damages claimed. The Class Member will provide the Affidavit to the Referee and to the Defendant. The Defendant will then have 30 days in which to file a Response, failing which judgment will be granted for the amount claimed in the Affidavit. The Response may contain whatever information the Defendant wishes to adduce to rebut the proof of class membership and/or to challenge the quantum of individual damages sought. There will be no discoveries or cross-examinations permitted, nor any *viva voce* evidence adduced, nor any oral submissions except with leave of the Referee. Based on the material submitted, the Referee will adjudicate on the quantum of compensation.

20. The Referee will have discretion to award costs in order to encourage settlement of individual claims and in order to control the process. Decisions of the Referee may be appealed to the trial judge within 30 days of issue. Otherwise, judgment will be granted in accordance with the Referee's decision.

*Reporting to Class Members*

The Plaintiffs propose that Class Counsel post updates to its web site ([www.kleinlyons.com](http://www.kleinlyons.com)) quarterly and at other times as may be necessary or ordered by the Court.

**Dated: April 15, 2003**

THIS PROPOSED PLAN FOR THE PROCEEDING was prepared by Klein, Lyons, Suite 1100 - 1333 West Broadway, Vancouver, British Columbia, V6H 4C1, Phone: (604) 874-7171, Fax: (604) 874-7190.

## APPENDIX "A"

No. L 023298  
Vancouver Registry

## IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

HELEN FAKHRI and ADY AYLON

Plaintiffs

AND:

ALFALFA'S CANADA, INC.  
carrying on business as  
CAPERS COMMUNITY MARKETS

Defendant

## NOTICE OF CERTIFICATION

This notice may affect your rights.  
Please read carefully.

Introduction

On \_\_\_\_\_ the Supreme Court of British Columbia certified this case as a class proceeding. You are receiving this notice because you may be a member of the class. Any questions about the case should be directed to the lawyers for the class as set out below.

This notice is not an expression of the Court's opinion regarding the merits of any claim or defence asserted in the class action. The only purpose of this notice is to inform you of the class action so that you may decide what steps to take in relation to it.

The class includes persons who:

- (a) claim to have been infected with Hepatitis A in the months of February, March or April 2002 as a result of handling and/or consuming food products produced, manufactured, distributed and/or sold by the Defendant that were tainted with the Hepatitis A virus, or having contact with a person who was infected with Hepatitis A as a result of handling and/or consuming the tainted food products (the "Infected Class");
- (b) in the months of March or April 2002, received anti-Hepatitis A injections because of handling and/or consuming food products produced, manufactured, distributed and/or sold by the Defendant that were or might have been tainted with the Hepatitis A virus, or having contact with a person who was or might have

been infected with Hepatitis A as a result of handling and/or consuming the Defendant's food products (the "Immunized Class").

### What is the Class Action About?

On October 23, 2002 the Plaintiffs started a class action against the Defendant. The Plaintiffs claim, on behalf of themselves and others similarly situated, for general, special, and punitive damages for injuries, losses and expenses suffered as a consequence of the exposure to Hepatitis A tainted food products produced, manufactured, distributed and/or sold by the Defendant. The Plaintiffs claim these damages against the Defendant for negligence, breach of warranty, and breach of the statutory obligations under the *Sale of Goods Act*, R.S.B.C. 1996, c. 410, for releasing into the stream of commerce food products that were dangerously defective, unfit for human consumption, and of unmerchantable quality, and for failing to meet the standard of care and requirements under the *Food and Drugs Act*, R.S.C. 1985, c. F-27. Details of the claim are set out in the Statement of Claim which is available from Klein, Lyons at the address set out below and on the Klein, Lyons website at: [www.kleinlyons.com](http://www.kleinlyons.com).

The Court has appointed Ady Aylon as representative plaintiff.

### British Columbia Residents - What Do I Need to Do?

If you resided in British Columbia on the date this class proceeding was certified, you are automatically included and do not need to do anything to be a class member in this class action. However, it is recommended that you contact class counsel so that you can be put on our mailing list for periodic updates on the status of the proceeding.

If you DO NOT want to participate, you must opt out of this action by signing and mailing the Court approved Opt Out Form to Klein Lyons postmarked no later than \_\_\_\_\_. This form is also available from Klein, Lyons at the address set out below and on the Klein, Lyons website at: [www.kleinlyons.com](http://www.kleinlyons.com).

If you opt out of the class action, you should be aware that there are strictly enforced time limits within which you must take formal legal action to pursue your claim. The certification of this class action suspended the running of the limitation period from the time the action was filed, October 23, 2002. The limitation period will resume running against you if you opt out of the class action. By opting out of the class action, you will take full responsibility for obtaining legal advice about the limitation period and for taking all legal steps necessary to protect your claim.

All class members will be bound by the judgment of the Court on the common issues unless they have opted out of the class.

### Non British Columbia Residents - Opting In to the Class Proceeding

If you were not residing in British Columbia on the date this class proceeding was certified, you must OPT IN to the class proceeding if you wish to join the class action and be a class member. You may opt in to the class action by signing and mailing the Court approved Opt In Form to Klein, Lyons postmarked no later than \_\_\_\_\_. If you do not opt in by delivering the Opt In Form, you will not be bound by the judgment nor will you be entitled to share in the benefits of the class action. By not opting in to the class action, you will take full responsibility for initiating a personal action against the defendant or for taking all legal steps necessary to protect your claim. This form is also available from Klein, Lyons at the address set out below and on the Klein, Lyons website at: [www.kleinlyons.com](http://www.kleinlyons.com).

### How Will the Case Proceed?

Class actions have two stages. The first stage is the trial of the common issues. The court will set a date for the trial of the common issues. The common issues in this class action are:

1. Did the Defendant have a duty to class members to ensure that its food products were safe and reasonably fit for their intended purpose, being human consumption?
2. Was the Defendant negligent in the production, manufacture, distribution, or sale of the food products that were or might have been contaminated with the Hepatitis A virus?
3. Did the Defendant breach an express or implied warranty to class member who purchased its food products that those food products were safe and reasonably fit for their intended purpose, being human consumption?
4. Did the Defendant breach a statutory warranty to class members who purchased its food products, pursuant to the *Sale of Goods Act*, R.S.B.C. 1996, c. 410 and the *Food and Drugs Act*, R.S.C. 1985, c. F-27?
5. Should punitive and exemplary damages be awarded against the Defendant and if so, in what amount?

The second stage of the class action deals with the issues individual to each class member. The court will determine what further steps class members need to take to prove entitlement to compensation, and in what amount. This stage will require individual class members to prove that the individual is a member of the class, and requires the class member to prove the amount of damages claimed.

The Representative Plaintiff will instruct the lawyers during the first stage of the class actions. If a class member wishes to participate in the proceedings directly, the class member may make an application to the Court. Each class member has the right to be separately represented by a

lawyer of his or her own choice.

What are the Financial Consequences of the Class Proceeding?

Members of the classes will be entitled to the benefit of a successful judgment of the Court on the common issues. If the action is not successful on the common issues, no member of the class will be responsible to pay the costs of the Defendant. If the trial of the common issues is successful but a class member is not successful in proving that he or she has suffered any individual damages, that class member may be responsible to pay the costs of the defendant in the individual class member's damage claim.

The Representative Plaintiff has entered into a fee agreement with Class Counsel that provides for the firm to be paid 33.33% of any settlement or favourable judgment for legal services rendered and to be reimbursed for disbursements incurred in the litigation. The disbursements will form a first charge in favour of Klein, Lyons on any favourable settlement or judgment.

No member of the class will be responsible for the Plaintiffs' counsel legal fees or disbursements unless money is recovered in a settlement or judgment.

Who are the Lawyers for the Class?

The lawyers for the class are Klein, Lyons:

Klein Lyons  
Barristers & Solicitors  
1100 – 1333 West Broadway  
Vancouver, BC V6H 4C1  
Telephone: (604) 874-7171  
Facsimile: (604) 874-7180  
Email: [info@kleinlyons.com](mailto:info@kleinlyons.com)

How Do I Find Out More?

Any questions about the matters in this Notice should **NOT** be directed to the court. Class members who want to know more about the class actions can check Klein, Lyons website at [www.kleinlyons.com](http://www.kleinlyons.com) or contact Klein Lyons directly at the contact information above.

No. L 023298  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

HELEN FAKHRI and ADY AYLON

Plaintiffs

AND:

ALFALFA'S CANADA, INC.  
carrying on business as  
CAPERS COMMUNITY MARKETS

Defendant

**OPT OUT FORM**

**For British Columbia Residents Only**

I, [NAME] \_\_\_\_\_

[ADDRESS] \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**DO NOT WISH TO PARTICIPATE** in this class action.

I understand that this class action is brought on behalf of all persons who claim to have suffered damages as a consequence of exposure to food products produced, manufactured, distributed, and/or sold by the Defendant that were or might have been tainted with the Hepatitis A virus.

I understand that if I opt out and complete this form, I will not take part in the class action, agree to be excluded from the class action, and will not be bound by the result whether favourable or unfavourable.

I also understand that a lawsuit must be commenced within a specified limitation period or it will be legally barred. The certification of the class action suspended the running of the limitation from the time the actions were filed. The limitation period will resume running against me if I opt out of the class action. By opting out of the class action, I take full responsibility for obtaining legal advice about the limitation period and for taking all legal steps necessary to protect my claim.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature

MAIL OR DELIVER NO LATER THAN \_\_\_\_\_ TO:

Klein, Lyons  
Barristers & Solicitors  
1100 - 1333 West Broadway  
Vancouver, BC V6H 4C1

No. L 023298  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

HELEN FAKHRI and ADY AYLON

Plaintiffs

AND:

ALFALFA'S CANADA, INC.  
carrying on business as  
CAPERS COMMUNITY MARKETS

Defendant

OPT IN FORM

For Non-British Columbia Residents Only

I, [NAME] \_\_\_\_\_

[ADDRESS] \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

WANT TO PARTICIPATE in this class action.

I understand that this class action is brought on behalf of all persons who claim to have suffered damages as a consequence of exposure to food products produced, manufactured, distributed, and/or sold by the Defendant that were or might have been tainted with the Hepatitis A virus.

I understand that if I opt in and complete this form, I will take part in the class actions and be bound by the result whether favourable or unfavourable.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature

MAIL OR DELIVER NO LATER THAN \_\_\_\_\_ TO:

Klein, Lyons  
Barristers & Solicitors  
1100 - 1333 West Broadway  
Vancouver, BC V6H 4C1

This is Exhibit "D" referred to in the  
affidavit of Lisa Porteous  
sworn before me, this 29<sup>th</sup>  
day of May, 2013

DANIEL E. SPELLISCY  
Barrister & Solicitor

No. L032814  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Between:

FREDERICK ALBERT RUDDALL

Plaintiff

AND:

BC RAIL LTD.

Defendant

(Brought Under The Class Proceedings Act)

**PLAINTIFF'S PROPOSED PLAN FOR THE PROCEEDING**

**INTRODUCTION**

1. The *Class Proceedings Act*, R.S.B.C. 1996, c.50, requires that a workable plan be put in place as part of the certification process. The solicitors for the Plaintiff in this action proposes that the final Plan involve input by the solicitors for the Defendant and this Honourable Court. The Plaintiff proposes the following draft Plan for the Proceeding, subject to the issues of scheduling and appeals.

**STAGE 1**

**Procedures Prior to Certification**

2. In accordance with the usual practice in British Columbia, a pre-certification schedule has been agreed upon by the Parties and approved by the Court. Steps will include:

- a) The Plaintiff to deliver his Notice of Motion for Certification and supporting affidavit(s).
- a) The Defendant to deliver its materials in response to the Plaintiff's certification application.
- b) Both parties to conduct cross-examinations, if any, of deponents.

- b) The Plaintiff to serve his certification argument.
- c) The Defendant to serve its certification argument.
- d) The Plaintiff serves his reply to the Defendant's certification argument.
- e) Certification hearing.

## STAGE 2

### Procedures After Certification

#### *Notice to Class Members*

3. Pursuant to section 19 of the *Class Proceedings Act*, notice that a proceeding has been certified as a class proceeding must be given to class members. The Plaintiff proposes that, by a date to be set by the Court, the proposed Notice of Certification (Appendix "A" to this Plan), be given to the class members by the following means:

- a) a Notice to Class Members, Opt Out Form and Opt In Form mailed to all class members known to the Defendant at the expense of the Defendant;
- b) the issuance of a press release in a form to be agreed upon by the parties or if the parties cannot agree, in a form ordered by the Court;
- c) posting of the Notice to Class Members, Opt Out Form and Opt In Form on class counsel's web site: [www.kleinlyons.com](http://www.kleinlyons.com).

4. The Plaintiff proposes that these steps be completed within 60 days after the certification Order.

#### *Deadline to Opt Out*

5. Persons who are resident in British Columbia on the date of certification and who wish to opt out of this class proceeding may do so by delivering the Court approved Opt Out Form to class counsel on or before a date to be set by the Court.

#### *Deadline to Opt In*

6. Persons who are not resident in British Columbia on the date of certification and who wish to opt in to this class proceeding may do so by delivering the Court approved Opt In Form to class counsel on or before a date to be set by the Court.

#### *Case Management Hearings*

7. The Plaintiff proposes that case management hearings be scheduled before the case management judge on a regular basis to deal with pre-trial scheduling matters and interlocutory applications.

#### *Interlocutory Motions*

8. The Plaintiff proposes that all interlocutory motions be made before the case management judge. All material in support of interlocutory applications, including written submissions, shall be served, exchanged, and filed in accordance with Rule 51A of the *Rules of Court*.

#### *Document Production*

9. Each party will initiate document production by delivering to the other party a List of Documents. Both parties will deliver a List of Documents within 30 days of the certification Order. Each party will then request copies of whatever documents they require from the other party's List. Each party will deliver all documents within 30 days of the request. If a party claims privilege over a document(s) and the other party challenges that privilege, the hearing to determine the issue will be held as soon as practical, subject to the Court's availability.

10. The Plaintiff submits that this Honourable Court should specify the following procedures for documentary productions:

- a) Each page of each document disclosed by the parties shall have its own consecutive "Bates number".
- b) The parties shall each use "Summation" or otherwise compatible document management software for the production of their respective Lists of Documents.
- c) The parties shall exchange electronic copies of their respective Lists of Documents in a Summation compatible format. That is, each List should have an electronic index of all Schedule A documents disclosed. The index should provide sufficient description to identify each document disclosed, including the date(s) of the document, the nature of the document, the tab and Bates number range of the document, its author(s) and recipient(s), and any attachments. The index shall be organized in logical fashion, such as

chronologically. Along with the index, the parties shall exchange electronic copies of all documents listed in Schedule A of their List of Documents in Summation compatible, scanned form, on CD-ROMs. The scanned documents shall be electronically cross-referenced back to the index such that any person operating Summation may click on an item listed in the index and then be able to view an electronic copy of the document referenced.

- d) The parties shall each make the original copies of the documents listed in Schedule A of the List of Documents available for inspection by the opposing party upon reasonable notice.
- e) The parties shall each bear their own costs of preparing their own respective electronic List of Documents and shall provide the opposing party with a Summation compatible electronic copy of their List of Documents and scanned Schedule A documents at no charge to the other side.

#### *Examination for Discovery*

11. The Plaintiff anticipates that the Examination for Discovery of the Defendant will require approximately 10 days subject to refusals and undertakings. Examinations for Discovery will be completed within 6 months of the certification Order.

#### *Exchange of Expert Opinions/Case Management/Common Issues Trial*

12. Expert opinions will be exchanged within 12 months of the Certification Order. Following the exchange of expert opinions, the Plaintiff intend to attend before the Court to clarify and/or redefine the common issues. Also at this Case Management Hearing both parties will submit a detailed written estimate of the length of the trial of the common issues. Following a determination of the trial length, the Plaintiff submits that the trial of the common issues be scheduled to begin as soon as the Court's availability permits.

### **STAGE 3**

#### **Common Issues Trial**

13. The Plaintiff estimates that the trial of the common issues will take approximately 4 weeks.

**STAGE 4****Individual Issues Determination***Individual Damages Quantification*

14. The Plaintiff proposes that class members' damages be quantified and distributed on an aggregate basis pursuant to sections 29 - 33 of the *Class Proceedings Act*.

THIS PROPOSED PLAN FOR THE PROCEEDING was prepared by Klein, Lyons, Suite 1100 - 1333 West Broadway, Vancouver, British Columbia, V6H 4C1, Phone: (604) 874-7171, Fax: (604) 874-7190.

## APPENDIX "A"

No. L032814  
Vancouver Registry

## IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

FREDRICK ALBERT RUDDELL

Plaintiff

and:

BC RAIL LTD.

Defendant

(Brought Under The Class Proceedings Act)

NOTICE OF CERTIFICATION

This notice may affect your rights.  
Please read carefully.

Introduction

On \_\_\_\_\_ the Supreme Court of British Columbia certified this case as a class proceeding. You are receiving this notice because you may be a member of the class. Any questions about the case should be directed to the lawyers for the class as set out below.

This notice is not an expression of the Court's opinion regarding the merits of any claim or defence asserted in the class action. The only purpose of this notice is to inform you of the class action so that you may decide what steps to take in relation to it.

The class includes:

(a) Retired Members of the BC Rail Ltd. Pension Plan (the "Pension Plan") as of July 1, 1998;

(b) Deferred Vested Members of the Pension Plan as of July 1, 1998;

- (c) Spouses, beneficiaries and/or estates who are entitled to pre-retirement or post-retirement survivor benefits from the Pension Plan due to a relationship with persons in paragraphs (a) or (b);
- (d) Members of the Pension Plan who became Retired Members subsequent to July 1, 1998;
- (e) Deferred Vested Members subsequent to July 1, 1998;
- (f) Spouses, beneficiaries and/or estates who are entitled to pre-retirement or post-retirement survivor benefits due to a relationship with persons in paragraphs (d) or (e); and,
- (g) The beneficiaries and/or estates of persons in paragraphs (a) to (f) who died prior to any settlement or judgment in this action.

#### What is the Class Action About?

On October 3, 2003 the Plaintiff started a class action against the Defendant. The Plaintiff alleges breach of fiduciary duty against the Defendant with regard to the Defendant's administration of the Pension Plan Fund. The Plaintiff is seeking, on his own behalf and on behalf of the class, damages, an accounting, cash distributions, interest and costs against the Defendant. Details of the claim are set out in the Amended Statement of Claim which is available from Klein, Lyons at the address set out below and on the Klein, Lyons website at: [www.kleinlyons.com](http://www.kleinlyons.com).

The Court has appointed Fredrick Ruddell as Representative Plaintiff.

#### British Columbia Residents - What Do I Need to Do?

If you resided in British Columbia on the date this class proceeding was certified, you are automatically included and do not need to do anything to be a class member in this class action. However, it is recommended that you contact class counsel so that you can be put on our mailing list for periodic updates on the status of the proceeding.

If you DO NOT want to participate, you must opt out of this action by signing and mailing

the Court approved Opt Out Form to Klein Lyons postmarked no later than \_\_\_\_\_. This form is also available from Klein, Lyons at the address set out below and on the Klein, Lyons website at: [www.kleinlyons.com](http://www.kleinlyons.com).

If you opt out of the class action, you should be aware that there are strictly enforced time limits within which you must take formal legal action to pursue your claim. By opting out of the class action, you will take full responsibility for obtaining legal advice about the limitation period and for taking all legal steps necessary to protect your claim.

All class members will be bound by the judgment of the Court on the common issues unless they have opted out of the class.

#### Non British Columbia Residents - Opting In to the Class Proceeding

If you were not residing in British Columbia on the date this class proceeding was certified, you must OPT IN to the class proceeding if you wish to join the class action and be a class member. You may opt in to the class action by signing and mailing the Court approved Opt In Form to Klein, Lyons postmarked no later than \_\_\_\_\_. If you do not opt in by delivering the Opt In Form, you will not be bound by the judgment nor will you be entitled to share in the benefits of the class action. By not opting in to the class action, you will take full responsibility for initiating a personal action against the Defendant or for taking all legal steps necessary to protect you claim. This form is also available from Klein, Lyons at the address set out below and on the Klein, Lyons website at: [www.kleinlyons.com](http://www.kleinlyons.com).

#### How Will the Case Proceed?

Class actions have two stages. The first stage is the trial of the common issues. The court will set a date for the trial of the common issues. The common issues in this class action are:

1. Did the Defendant breach its fiduciary duties to the class members as alleged in the Statement of Claim?
2. If the Defendant did breach its fiduciary duties to the class members, what relief should be granted to the class members?

The second stage of the class action deals with the issues individual to each class member. The court will determine what further steps class members need to take to prove entitlement to compensation, and in what amount.

The Representative Plaintiff will instruct the lawyers during the first stage of the class actions. If a class member wishes to participate in the proceedings directly, the class member may make an application to the Court. Each class member has the right to be separately represented by a lawyer of his or her own choice.

### What are the Financial Consequences of the Class Proceeding?

Members of the classes will be entitled to the benefit of a successful judgment of the Court on the common issues. If the action is not successful on the common issues, no member of the class will be responsible to pay the costs of the Defendant. If the trial of the common issues is successful but a class member is not successful in proving that he or she has suffered any individual damages, that class member may be responsible to pay the costs of the Defendant in the individual class member's damage claim.

The Representative Plaintiff has entered into a fee agreement with Class Counsel that provides for the firm to be paid 33.33% of any settlement or favourable judgment for legal services rendered after deduction of any disbursements incurred by Class Counsel in the litigation. The disbursements will form a first charge in favour of Klein, Lyons on any favourable settlement or judgment.

No member of the class will be responsible for the Plaintiff's counsel legal fees or disbursements unless money is recovered in a settlement or judgment.

### Who are the Lawyers for the Class?

The lawyers for the class are Klein, Lyons:

Klein Lyons  
Barristers & Solicitors  
1100 – 1333 West Broadway  
Vancouver, BC V6H 4C1  
Telephone: (604) 874-7171  
Facsimile: (604) 874-7180  
Email: [info@kleinlyons.com](mailto:info@kleinlyons.com)

### How Do I Find Out More?

Any questions about the matters in this Notice should NOT be directed to the court. Class members who want to know more about the class actions can check Klein, Lyons website at [www.kleinlyons.com](http://www.kleinlyons.com) or contact Klein Lyons directly at the contact information above.

No. L032814

Vancouver Registry

## IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

FREDERICK ALBERT RUDELL

Plaintiff

AND:

BC RAIL LTD.

Defendant

(Brought Under the Class Proceedings Act)

## OPT OUT FORM

For British Columbia Residents Only

I. [NAME] \_\_\_\_\_

[ADDRESS] \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

DO NOT WISH TO PARTICIPATE in this class action.

I understand that this class action is brought on behalf of:

(a) Retired Members of the BC Rail Ltd. Pension Plan (the "Pension Plan") as of July 1, 1998;

(b) Deferred Vested Members of the Pension Plan as of July 1, 1998;

(c) Spouses, beneficiaries and/or estates who are entitled to pre-retirement or post-retirement survivor benefits from the Pension Plan due to a relationship with persons in paragraphs (a) or (b);

2

- (d) Members of the Pension Plan who became Retired Members subsequent to July 1, 1998;
- (e) Deferred Vested Members subsequent to July 1, 1998;
- (f) Spouses, beneficiaries and/or estates who are entitled to pre-retirement or post-retirement survivor benefits due to a relationship with persons in paragraphs (d) or (e); and,
- (g) The beneficiaries and/or estates of persons in paragraphs (a) to (f) who died prior to any settlement or judgment in this action.

I understand that if I opt out and complete this form, I will not take part in the class action, agree to be excluded from the class action, and will not be bound by the result whether favourable or unfavourable.

I also understand that a lawsuit must be commenced within a specified period or it will be legally barred. By opting out of the class action, I take full responsibility for obtaining legal advice about any claim I may have against B.C. Rail for the matters at issue in this lawsuit and any limitation period concerning my possible claim.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness

MAIL OR DELIVER NO LATER THAN \_\_\_\_\_ TO:

Klein, Lyons  
Barristers & Solicitors  
1100 - 1333 West Broadway  
Vancouver, BC V6H 4C1

No. L032814  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

FREDERICK ALBERT RUDDELL

Plaintiff

AND:

BC RAIL LTD.

Defendant

(Brought Under The Class Proceedings Act)

OPT IN FORM  
For Non-British Columbia Residents Only

I, [NAME] \_\_\_\_\_

[ADDRESS] \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

WANT TO PARTICIPATE in this class action.

I understand that this class action is brought on behalf of:

(a) Retired Members of the BC Rail Ltd. Pension Plan (the "Pension Plan") as of July 1, 1998;

(b) Deferred Vested Members of the Pension Plan as of July 1, 1998;

2

- (c) Spouses, beneficiaries and/or estates who are entitled to pre-retirement or post-retirement survivor benefits from the Pension Plan due to a relationship with persons in paragraphs (a) or (b);
- (d) Members of the Pension Plan who became Retired Members subsequent to July 1, 1998;
- (e) Deferred Vested Members subsequent to July 1, 1998;
- (f) Spouses, beneficiaries and/or estates who are entitled to pre-retirement or post-retirement survivor benefits due to a relationship with persons in paragraphs (d) or (e); and,
- (g) The beneficiaries and/or estates of persons in paragraphs (a) to (f) who died prior to any settlement or judgment in this action.

I understand that if I opt in and complete this form, I will take part in the class actions and be bound by the result whether favourable or unfavourable.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness

MAIL OR DELIVER NO LATER THAN \_\_\_\_\_ TO:

Klein, Lyons  
Barristers & Solicitors  
1100 - 1333 West Broadway  
Vancouver, BC V6H 4C1

This is Exhibit "E" referred to in the  
affidavit of Lisa Porteous  
sworn before me, this 29  
day of May, 2013

DANIEL E. SPELLISCY  
Barrister & Solicitor  
IN THE SUPREME COURT OF BRITISH COLUMBIA

No. L041024  
Vancouver Registry

BETWEEN:

LUCIEN LIEBERMAN AND MARJORY MORRIS

Plaintiffs

AND:

BUSINESS DEVELOPMENT BANK OF CANADA

Defendant

(Brought pursuant to the *Class Proceedings Act*, RSBC 1996, c. 50)

### PLAINTIFFS' PROPOSED PLAN FOR THE PROCEEDING

#### INTRODUCTION

1. The *Class Proceedings Act*, R.S.B.C. 1996, c.50, requires that a workable plan be put in place as part of the certification process. The solicitors for the Plaintiffs in this action propose that the final Plan involve input by the solicitors for the Defendant and this Honourable Court. The Plaintiffs propose the following draft Plan for the Proceeding, subject to the issues of scheduling and appeals.

#### STAGE I

##### Procedures Prior to Certification

2. In accordance with the usual practice in British Columbia, a pre-certification schedule will be set. Steps will include:

- a) Plaintiffs deliver their Notice of Motion for Certification and supporting affidavit(s).
- b) Defendant delivers its affidavit(s) in response to the Plaintiffs' certification application.
- c) Both parties conduct cross-examinations, if any, of deponents.
- d) Plaintiffs serve their certification argument.

- e) Defendant serves its certification argument.
- f) Plaintiffs serve their reply to the Defendant's certification argument.
- g) Certification hearing.

## **STAGE 2**

### **Procedures After Certification**

#### *Notice to Class Members*

3. Pursuant to section 19 of the *Class Proceedings Act*, notice that a proceeding has been certified as a class proceeding must be given to class members. The Plaintiffs propose that, by a date to be set by the Court, the proposed Notice of Certification (Appendix "A" to this Plan), be given to the class members by the following means:

- a) a Notice to Class Members, Opt Out Form and Opt In Form mailed to all class members known to the Defendant at the expense of the Defendant;
- b) the issuance of a press release in a form to be agreed upon by the parties or if the parties cannot agree, in a form ordered by the Court;
- c) posting of the Notice to Class Members, Opt Out Form and Opt In Form on class counsel's web site: [www.kleinlyons.com](http://www.kleinlyons.com).

4. The Plaintiffs propose that these steps be completed within 60 days after the certification Order.

#### *Deadline to Opt Out*

5. Persons who are resident in British Columbia on the date of certification and who wish to opt out of this class proceeding may do so by delivering the Court approved Opt Out Form to class counsel on or before a date to be set by the Court.

#### *Deadline to Opt In*

6. Persons who are not resident in British Columbia on the date of certification and who wish to opt in to this class proceeding may do so by delivering the Court approved Opt In Form to class counsel on or before a date to be set by the Court.

### *Case Management Hearings*

7. The Plaintiffs propose that case management hearings be scheduled before the case management judge on a regular basis to deal with pre-trial scheduling matters and interlocutory applications.

### *Interlocutory Motions*

8. The Plaintiffs propose that all interlocutory motions be made before the case management judge. All material in support of interlocutory applications, including written submissions, shall be served, exchanged, and filed in accordance with Rule 51A of the *Rules of Court*.

### *Exchange of Expert Opinions/Case Management/Common Issues Trial*

12. Expert opinions will be exchanged within 12 months of the Certification Order. Following the exchange of expert opinions, the Plaintiffs intend to attend before the Court to clarify and/or redefine the common issues. Also at this Case Management Hearing both parties will submit a detailed written estimate of the length of the trial of the common issues. Following a determination of the trial length, the Plaintiffs submit that the trial of the common issues be scheduled to begin as soon as the Court's availability permits.

## **STAGE 3**

### **Common Issues Trial**

13. The Plaintiffs estimate that the trial of the common issues will take approximately 3 weeks.

## **STAGE 4**

### **Individual Issues Determination**

#### *Individual Damages Quantification*

14. The Plaintiffs propose that class members' damages be quantified and distributed on an aggregate basis pursuant to sections 29 - 33 of the *Class Proceedings Act*.

THIS PROPOSED PLAN FOR THE PROCEEDING was prepared by Klein, Lyons, Suite 1100 - 1333 West Broadway, Vancouver, British Columbia, V6H 4C1, Phone: (604) 874-7171, Fax: (604) 874-7190.

## APPENDIX "A"

No. L041024  
Vancouver Registry

## IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

LUCIEN LIEBERMAN AND MARJORY MORRIS

Plaintiffs

AND:

BUSINESS DEVELOPMENT BANK OF CANADA

Defendant

(Brought pursuant to the *Class Proceedings Act*, RSBC 1996, c. 50)

## NOTICE OF CERTIFICATION

This notice may affect your rights.  
Please read carefully.

Introduction

On \_\_\_\_\_ the Supreme Court of British Columbia certified this case as a class proceeding. You are receiving this notice because you may be a member of the class. Any questions about the case should be directed to the lawyers for the class as set out below.

This notice is not an expression of the Court's opinion regarding the merits of any claim or defence asserted in the class action. The only purpose of this notice is to inform you of the class action so that you may decide what steps to take in relation to it.

The class includes:

- (a) retired members, entitled to benefit payments from the Pension Plan for employees of the Defendant (the "Pension Plan") with respect to credited service prior to April 9, 1997;
- (b) surviving spouses entitled to receive post-retirement survivor benefits with respect to retired members' credited service prior to April 9, 1997;
- (c) deferred vested members, entitled to benefit payments from the Pension Plan with respect to credited service prior to April 9, 1997;

### Non British Columbia Residents - Opting In to the Class Proceeding

If you were not residing in British Columbia on the date this class proceeding was certified, you must OPT IN to the class proceeding if you wish to join the class action and be a class member. You may opt in to the class action by signing and mailing the Court approved Opt In Form to Klein, Lyons postmarked no later than \_\_\_\_\_. If you do not opt in by delivering the Opt In Form, you will not be bound by the judgment nor will you be entitled to share in the benefits of the class action. By not opting in to the class action, you will take full responsibility for initiating a personal action against the defendant or for taking all legal steps necessary to protect your claim. This form is also available from Klein, Lyons at the address set out below and on the Klein, Lyons website at: [www.kleinlyons.com](http://www.kleinlyons.com).

### How Will the Case Proceed?

Class actions have two stages. The first stage is the trial of the common issues. The court will set a date for the trial of the common issues. The common issues in this class action are:

1. Did the Defendant breach their fiduciary duties to the class members as alleged in paragraphs 36 and 37 of the Statement of Claim?
2. If the Defendant did breach their fiduciary duties to the class members, what relief should be granted to the class members?

The second stage of the class action deals with the issues individual to each class member. The court will determine what further steps class members need to take to prove entitlement to compensation, and in what amount.

The Representative Plaintiff will instruct the lawyers during the first stage of the class actions. If a class member wishes to participate in the proceedings directly, the class member may make an application to the Court. Each class member has the right to be separately represented by a lawyer of his or her own choice.

### What are the Financial Consequences of the Class Proceeding?

Members of the classes will be entitled to the benefit of a successful judgment of the Court on the common issues. If the action is not successful on the common issues, no member of the class will be responsible to pay the costs of the Defendant. If the trial of the common issues is successful but a class member is not successful in proving that he or she has suffered any individual damages, that class member may be responsible to pay the costs of the defendant in the individual class member's damage claim.

The Representative Plaintiff has entered into a fee agreement with Class Counsel that provides

for the firm to be paid 25% of any settlement or favourable judgment for legal services rendered after deduction of any disbursements incurred by Class Counsel in the litigation. The disbursements will form a first charge in favour of Klein, Lyons on any favourable settlement or judgment.

No member of the class will be responsible for the Plaintiffs' counsel legal fees or disbursements unless money is recovered in a settlement or judgment.

**Who are the Lawyers for the Class?**

The lawyers for the class are Klein, Lyons:

Klein Lyons  
Barristers & Solicitors  
1100 – 1333 West Broadway  
Vancouver, BC V6H 4C1  
Telephone: (604) 874-7171  
Facsimile: (604) 874-7180  
Email: [info@kleinlyons.com](mailto:info@kleinlyons.com)

**How Do I Find Out More?**

Any questions about the matters in this Notice should **NOT** be directed to the court. Class members who want to know more about the class actions can check Klein, Lyons website at [www.kleinlyons.com](http://www.kleinlyons.com) or contact Klein Lyons directly at the contact information above.

No. L041024  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

LUCIEN LIEBERMAN AND MARJORY MORRIS

Plaintiffs

AND:

BUSINESS DEVELOPMENT BANK OF CANADA

Defendant

(Brought pursuant to the *Class Proceedings Act*, RSBC 1996, c. 50)

**OPT IN FORM**

**For Non-British Columbia Residents Only**

I, [NAME] \_\_\_\_\_

[ADDRESS] \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**WANT TO PARTICIPATE** in this class action.

I understand that this class action is brought on behalf of:

- (a) retired members, entitled to benefit payments from the Pension Plan for employees of the Defendant (the "Pension Plan") with respect to credited service prior to April 9, 1997;
- (b) surviving spouses entitled to receive post-retirement survivor benefits with respect to retired members' credited service prior to April 9, 1997;
- (c) deferred vested members, entitled to benefit payments from the Pension Plan with respect to credited service prior to April 9, 1997;

- (d) spouses, beneficiaries and/or estates who are entitled to pre-retirement or post-retirement survivor benefits due to a relationship with persons in paragraphs (a) or (c); and
- (e) the beneficiaries and/or estates of persons in paragraphs (a) – (d) who died prior to any settlement or judgement in this action.

I understand that if I opt in and complete this form, I will take part in the class actions and be bound by the result whether favourable or unfavourable.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature

MAIL OR DELIVER NO LATER THAN \_\_\_\_\_ TO:

Klein, Lyons  
Barristers & Solicitors  
1100 – 1333 West Broadway  
Vancouver, BC V6H 4C1

No. L041024  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

LUCIEN LIEBERMAN AND MARJORY MORRIS

Plaintiffs

AND:

BUSINESS DEVELOPMENT BANK OF CANADA

Defendant

(Brought pursuant to the *Class Proceedings Act*, RSBC 1996, c. 50)

**OPT OUT FORM**  
**For British Columbia Residents Only**

I, [NAME] \_\_\_\_\_

[ADDRESS] \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**DO NOT WISH TO PARTICIPATE** in this class action.

I understand that this class action is brought on behalf of:

- (a) retired members, entitled to benefit payments from the Pension Plan for employees of the Defendant (the "Pension Plan") with respect to credited service prior to April 9, 1997;
- (b) surviving spouses entitled to receive post-retirement survivor benefits with respect to retired members' credited service prior to April 9, 1997;
- (c) deferred vested members, entitled to benefit payments from the Pension Plan with respect to credited service prior to April 9, 1997;

- (d) spouses, beneficiaries and/or estates who are entitled to pre-retirement or post-retirement survivor benefits due to a relationship with persons in paragraphs (a) or (c); and
- (e) the beneficiaries and/or estates of any of persons in paragraphs (a) – (d) who died prior to any settlement or judgement in this action.

I understand that if I opt out and complete this form, I will not take part in the class action, agree to be excluded from the class action, and will not be bound by the result whether favourable or unfavourable.

I also understand that a lawsuit must be commenced within a specified limitation period or it will be legally barred. The certification of the class action suspended the running of the limitation from the time the actions were filed. The limitation period will resume running against me if I opt out of the class action. By opting out of the class action, I take full responsibility for obtaining legal advice about the limitation period and for taking all legal steps necessary to protect my claim.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature

MAIL OR DELIVER NO LATER THAN \_\_\_\_\_ TO:

Klein, Lyons  
Barristers & Solicitors  
1100 – 1333 West Broadway  
Vancouver, BC V6H 4C1

This is Exhibit " F " referred to in the  
affidavit of Lisa Porteous  
sworn before me, this 29<sup>th</sup>  
day of May, 2013

Court File No. VLC-S-S-074512  
Vancouver Registry

**DANIEL E. SPELLISCY**  
Barrister & Solicitor

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

TRINA LORRAINE CHALMERS, an infant, by her  
litigation guardian, CHERIE CHALMERS

Plaintiff

and:

AMO CANADA COMPANY and ADVANCED MEDICAL OPTICS, INC.

Defendants

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

### **PLAINTIFF'S PROPOSED LITIGATION PLAN**

#### **I. NOTICE OF CERTIFICATION**

1. If certification is granted, notice will issue pursuant to section 19 of the *Class Proceedings Act*.
2. Class counsel will post the notice of certification on its website [www.kleinlyons.com](http://www.kleinlyons.com) and send a copy of the notice to every class member who has provided an address to class counsel for that purpose. Notice will also be made through publication in appropriate newspapers.
3. A hearing will be held within 30 days of the issuance of the certification order to settle the terms and manner of notice. The form, content, manner and terms of the notice will be approved by the Court.
4. The Court will be asked approve an Opt-In form for Class members not residing in British Columbia wishing to participate in the class proceeding and an Opt-Out form for Class members residing in British Columbia who do not wish to participate in the class proceeding.

The Court will be asked to set a date by when the Opt-In and Opt-Out forms are to be delivered to class counsel.

## **II. DOCUMENTARY PRODUCTION**

5. To assist the parties and the Court in efficiently managing the production of documents, the parties will exchange documents in accordance with protocols established in the July 1, 2006 Practice Direction – Re: Electronic Evidence.

## **III. EXAMINATIONS FOR DISCOVERY**

6. The parties shall make themselves available for examination for discovery within 90 days of the service of the or on such dates as may be agreed by the parties.

7. The Plaintiff may ask the Court for an order allowing them to examine multiple representatives of the Defendants, if necessary.

## **IV. EXAMINATION OF NON-PARTIES**

8. Any party wishing to examine a non-party shall comply with the *Class Proceedings Act* and the *Rules of Court*.

## **V. EXPERT OPINIONS**

9. Expert Opinions shall be delivered to each party pursuant to Rule 40A of the *Rules of Court*.

## **VI. REFINEMENT OF THE COMMON ISSUES**

10. Following certification, examinations for discovery and the exchange of expert opinions and before the trial of the common issues, the Plaintiff may ask the Court for an order to amend or further refine the common issues, if required.

## **VII. DISPUTE RESOLUTION**

11. The Plaintiff is willing to participate in mediation or non-binding alternative dispute resolution efforts if the Defendants are prepared to do so.

## **VIII. READINESS FOR TRIAL**

12. Within 30 days before trial, the parties will file a Trial Certificate and hold a Pre-trial conference.

## **IX. DETERMINATION OF THE COMMON ISSUES AT TRIAL**

13. The Class will be informed of the results of the common issues trial by publication of notice pursuant to section 20 of the *Class Proceedings Act*.

14. If the Defendants are wholly successful on the common issues then, subject to any appeals, the litigation shall be at a close.

15. If the Plaintiff is wholly or partially successful on the common issues then it is anticipated that further proceedings, as described in Part X below, will be needed to resolve any outstanding individual issues.

## **X. INDIVIDUAL ISSUES DETERMINATION**

16. If any or all of the common issues are resolved in favour of the Class, the Plaintiff proposes that a case management hearing be held as soon as possible following judgment. At that hearing, both parties will be at liberty to make submissions regarding the methodology for resolving the remaining issues. Potential methods include references, mini-trials, mediation, arbitration or other means approved by the Court pursuant to sections 27 of the *Class*

*Proceedings Act*. At this time, the Plaintiff intends to propose a method of resolving outstanding individual issues as set out below.

17. The Court will be asked to specify procedures and deadlines by which class members shall identify themselves as Claimants wishing to make claims for individual compensation.

18. The proposed class is comprised of two groups: those who are diagnosed with *Acanthamoeba Keratitis*. (the “AK Class”) and those who were not diagnosed with AK but were either tested for AK or have monetary loss as a result of discarding contact lenses or contact lens solution (the “non-AK Class”).

19. Due to the difference in the nature and the quantum of the claims of the AK Class and the non-AK Class, the Plaintiff proposes that different damage assessment procedures be used for the claims.

20. The Plaintiff proposes that adjudications of the AK Claims be resolved through mini-trials with expert reports, discovery and guided by *the Rules of Court* for trial procedure to determine the issues of individual causation and damages.

21. Claims for the non-AK Class will likely be modest and it will be necessary to design procedures that are fair to both parties and that are appropriate for the value of the individual claim asserted. The Plaintiff proposes that claimant set out their entitlements in the form of a standardized Affidavit approved by the Court and that the Court appoint an independent claim assessor (the “Assessor”) to manage the process pursuant to s. 27 of the *CPA*. The Affidavit will provide details of the claim, class membership and monetary loss or medical testing. The Assessor shall determine the claimant’s entitlement based on the rules developed by the parties and approved by the Court. The Assessor will submit a letter setting out its finding for each claimant. If the Defendants or a claimant dispute the Assessor’s findings, they must set out in writing the basis for the dispute. The opposing party will then have the opportunity to submit written evidence in response. Any disputed claim that cannot be resolved by agreement will be referred to an independent Referee agreed upon by the parties or appointed by the Court. The

Referee shall determine the dispute based on written evidence, unless the Referee concludes that an oral hearing is necessary for a fair determination.

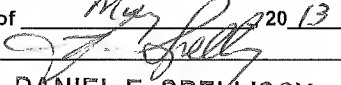
22. It will be the Plaintiff's position that the Defendants should be ordered to pay for any administration costs in the processing of the non-AK claims including the cost of hiring the Assessor and Referee.

## **XII. REVIEW OF THE PLAINTIFF'S LITIGATION PLAN**

23. The Plaintiff's litigation plan may be reviewed or modified as deemed necessary by the parties or the Case Management Judge during case management.

## **XIII. CASE MANAGEMENT**

24. During the litigation, regular case management meetings and any interlocutory motions will be scheduled, as required.

This is Exhibit "G" referred to in the  
 affidavit of Lisa Porteous  
 sworn before me, this 29<sup>th</sup>  
 day of May 2013  
  
 DANIEL E. SPELLISCY  
 Barrister & Solicitor

Court File No. S095493  
 Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

DENNIS JONES and SUSAN WILKINSON

Plaintiffs

and:

ZIMMER GMBH, ZIMMER, INC., and  
 ZIMMER OF CANADA LIMITED

Defendants

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

**PLAINTIFFS' PROPOSED LITIGATION PLAN**

**I. NOTICE OF CERTIFICATION**

1. If certification is granted, notice will issue pursuant to section 19 of the *Class Proceedings Act*.
2. Class counsel will post the Notice of Certification on its website [www.kleinlyons.com](http://www.kleinlyons.com) and send a copy of the Notice to every class member who has provided an address to class counsel for that purpose. The Notice to every:
  - (a) class member who has provided an address on implant registration cards;
  - (b) health care facility in Canada where a Durom Hip Resurfacing System has been implanted; and,
  - (c) orthopaedic surgeon in Canada.
3. Notice of certification may also be published in appropriate newspapers to be agreed to by the parties or settled by the Court.

4. A hearing will be held within 30 days of the issuance of the certification order to settle the terms and manner of notice. The form, content, manner and terms of the notice will be approved by the Court.

5. The Plaintiffs will ask the Court for order that the Defendants:

- (a) provide class counsel with the name and address of every person and health care facility described in paragraphs 2(a), (b) and (c) above; and
- (b) pay the costs of notice described in paragraphs 2(a), (b) and (c) and paragraph 3 pursuant to section 24 of the *Class Proceedings Act*.

6. The Court will be asked approve an Opt-In form for Class members not residing in British Columbia wishing to participate in the class proceeding and an Opt-Out form for Class members residing in British Columbia who do not wish to participate in the class proceeding. The Court will be asked to set a date by when the Opt-In and Opt-Out forms are to be delivered to class counsel.

## **II. DOCUMENTARY PRODUCTION**

7. To assist the parties and the Court in efficiently managing the production of documents, the parties will exchange documents in accordance with protocols established in the July 1, 2006 Practice Direction – Re: Electronic Evidence.

## **III. EXAMINATIONS FOR DISCOVERY**

8. The parties shall make themselves available for examination for discovery within 180 days of the issuance of the certification order or on such dates as may be agreed by the parties.

9. The Plaintiffs anticipate that given the nature of the matters at issue in the class proceeding it is not reasonably practical to complete the examination for discovery of each party in less than seven hours. The Court will be asked to specify the duration of each examination for discovery pursuant to Rule 7-2(2) of the *Supreme Court Civil Rules*.

10. The Plaintiffs may ask the Court for an order allowing them to examine multiple representatives of the Defendants, if necessary.

#### **IV. EXAMINATION OF NON-PARTIES**

11. Any party wishing to examine a non-party shall comply with the *Class Proceedings Act* and the *Supreme Court Civil Rules*.

#### **V. EXPERT OPINIONS**

12. Expert Opinions shall be delivered to each party pursuant to Rule 11-6 of the *Supreme Court Civil Rules*.

#### **VI. REFINEMENT OF THE COMMON ISSUES**

13. Following certification, examinations for discovery and the exchange of expert opinions and before the trial of the common issues, the Plaintiffs may ask the Court for an order to amend or further refine the common issues, if required.

#### **VII. DISPUTE RESOLUTION**

14. The Plaintiffs are willing to participate in mediation or non-binding alternative dispute resolution efforts if the Defendants are prepared to do so.

#### **VIII. READINESS FOR TRIAL**

15. Within 28 days before trial, the parties will file a Trial Certificate and hold a Trial Management Conference.

## **IX. DETERMINATION OF THE COMMON ISSUES AT TRIAL**

16. The Class will be informed of the results of the common issues trial by publication of notice pursuant to section 20 of the *Class Proceedings Act*.

17. If the Defendants are wholly successful on the common issues then, subject to any appeals, the litigation shall be at a close.

18. If the Plaintiffs are wholly or partially successful on the common issues then it is anticipated that further proceedings, as described in Part X below, will be needed to resolve any outstanding individual issues.

## **X. INDIVIDUAL ISSUES DETERMINATION**

19. If any or all of the common issues are resolved in favour of the Class, the Plaintiffs propose that a case management hearing be held as soon as possible following judgment. At that hearing, both parties will be at liberty to make submissions regarding the methodology for resolving the remaining issues. Potential methods include references, mini-trials, mediation, arbitration or other means approved by the Court pursuant to section 27 of the *Class Proceedings Act*. At this time, the Plaintiffs intend to propose a method of resolving outstanding individual issues as set out below.

20. The Court will be asked to specify procedures and deadlines by which class members shall identify themselves as Claimants wishing to make claims for individual compensation.

21. The Plaintiffs anticipate that given the nature of the injuries suffered by class members, adjudication of the Claims would best be resolved through mini-trials with expert reports and discovery and guided by the *Supreme Court Civil Rules* for trial procedure to determine the issues of individual causation and damages.

**XII. REVIEW OF THE PLAINTIFFS' LITIGATION PLAN**

22. The Plaintiffs' litigation plan may be reviewed or modified as deemed necessary by the parties or the Case Management Judge during case management.

**XIII. CASE MANAGEMENT**

23. During the litigation, regular case planning conferences and any interlocutory motions will be scheduled, as required.

**SCHEDULE B**

**CASE MANAGEMENT PLAN**

This is Exhibit "H" referred to in the  
affidavit of Lisa Porteous  
sworn before me, this 09<sup>th</sup>  
day of March, 2013

**DANIEL E. SPELLISCY**  
Barrister & Solicitor

The Plaintiffs propose the following Case Management Plan should be granted:

**NOTICE**

1. A hearing will be held to settle the terms and manner of giving Notice to Class members, and the forms of the opt-in notices and the opt-out notices and the date for their delivery, within 60 days from the date this action is certified as a class proceeding (the "Certification Date").
2. The Notice to the Class will be published, delivered or otherwise circulated within 90 days of the Certification Date.

**DISCOVERY**

3. In terms of any discovery required:

Each party will deliver Lists of Documents relating to the certified common issues within 90 days of the Certification Date.

A schedule of Examinations for Discoveries relating to the certified common issues shall be set at a Case Management Conference held within 60 days of the Certification Date and those examinations shall be completed pursuant to that schedule within 180 days from the Certification Date.

**EXPERT REPORTS**

4. The Plaintiffs will deliver any further expert reports in relation to the certified common issues within 180 days of the Certification Date.
5. The Defendant will deliver its expert reports in relation to the certified common issues within 60 days following the receipt of the Plaintiffs' expert reports.

6. The Plaintiffs will deliver any reply reports within 30 days of the receipt of the Defendant's expert reports.

### **CASE MANAGEMENT AND INTERLOCUTORY APPLICATIONS**

7. There will be a Case Management Conference before the Case Management Judge every two months, unless the parties and the Court agree that such a hearing is not required.
8. Pursuant to s. 14(1) of the *Class Proceedings Act*, the Case Management Judge shall hear all interlocutory applications either at the regular Case Management Conferences or on a date for hearing secured at a Case Management Conference or through Trial Division.
9. All materials in support of an interlocutory application shall be delivered and signed in accordance with Rule 51A of the Rules of Court.

### **COMMON ISSUES TRIAL**

10. The Plaintiffs propose to resolve the common issues through a summary trial application pursuant to Rule 18A to be held within one year of the Certification Date. A schedule for the delivery of Affidavits and Arguments shall be set at a Case Management hearing within 180 days of the Certification Date.
11. In the event any of the common issues are determined to be unsuitable for resolution upon the summary trial, a date shall be fixed for the trial of the remaining common issues within 120 days of Judgment on the summary trial application.

### **INDIVIDUAL ISSUES DETERMINATION**

12. If the Defendant is wholly successful on the common issues, the case will be at an end and no individual issues determination will be required.

13. The Plaintiffs propose that if any or all of the common issues are resolved in favour of the Class, then the parties will convene for argument under section 27 of the *Class Proceedings Act* to determine the appropriate course for any remaining issues. At this time the Plaintiffs intend to present the following process:
- a. After the determination of the common issues, the parties and the Court will consider whether there are any issues remaining that may be determined as secondary common issues.
  - b. The Defendant will be required to account for all monies received at a criminal rate. These monies will be placed in a trust fund for the benefit of the class members.
  - c. Claims Forms will be developed by the parties and approved by the Court. If defences are identified during the determination of the common issues that necessitate additional evidence from class members, then the Claims Forms will require class members to swear a statutory declaration setting out all material facts within their knowledge relevant to any such defences.
  - d. An independent Claim Processor will be appointed by the Court. Using the Defendant's records, the Claim Processor shall determine each class member's entitlement based on Claim Processing Rules developed by the parties and agreed upon by the Court. These Claim Processing rules will be designed to allow for the majority of claims to be determined using an automated system. The Claim Processor will submit a report to the Court setting out each class member's entitlement for approval.
  - e. If the Defendant or any class member disputes a class member's entitlement as determined by the Claim Processor, they must set out in writing the basis for that dispute along with supporting evidence. The opposing party will have the opportunity to submit written evidence in response to the dispute.
  - f. Any disputed claim that cannot be resolved by agreement will be referred to an independent Referee agreed upon by the parties or appointed by the Court. The Referee shall determine the dispute on the basis of the written evidence presented, unless the Referee concludes that an oral hearing is necessary for a just determination. A report of the Referee's determination of disputed claims will be submitted to the Court for approval.

**SUMMARY**

- |    |                                  |                                       |
|----|----------------------------------|---------------------------------------|
| 1. | Certification Date plus 60 days  | Hearing on Notice                     |
| 2. | Certification Date plus 90 days  | Delivery of Notice                    |
| 3. | Certification Date plus 90 days  | Delivery of List of Documents         |
| 4. | Certification Date plus 180 days | Examinations for Discovery concluded  |
| 5. | Certification Date plus 180 days | Delivery of plaintiffs' Reports       |
| 6. | Certification Date plus 240 days | Delivery of Defendant's Reports       |
| 7. | Certification Date plus 270 days | Delivery of Plaintiffs' Reply Reports |
| 8. | Certificate Date plus 1 year     | Summary Trial                         |

This is Exhibit "I" referred to in the  
affidavit of Lisa Porteous  
sworn before me, this 29<sup>th</sup>  
day of May, 20 13  
Daniel E. Spelliscy  
Barrister & Solicitor

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Court File No. S-122255  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

JANET MERLO

Plaintiff

and:

THE ATTORNEY GENERAL OF CANADA AND THE MINISTER OF  
JUSTICE OF BRITISH COLUMBIA

Defendants

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

**PLAINTIFF'S PROPOSED LITIGATION PLAN**

**I. NOTICE OF CERTIFICATION**

1. If certification is granted, notice will issue pursuant to section 19 of the *Class Proceedings Act*.
2. Class counsel will post the Notice of Certification on its website [www.kleinlyons.com](http://www.kleinlyons.com) and send a copy of the Notice to every class member who has provided an address to class counsel for that purpose. The Plaintiff proposes that Notice be sent by the Defendants to every:
  - (a) serving female Member, Civilian Member and Public Service Employee of the Royal Canadian Mounted Police; and
  - (b) last known address of former female Member, Civilian member and Public Service Employees of the Royal Canadian Mounted Police.
3. Notice of certification may also be published in appropriate newspapers to be agreed to by the parties or settled by the Court.

4. A hearing will be held within 30 days of the issuance of the certification order to settle the terms and manner of notice. The form, content, manner and terms of the notice will be approved by the Court.

5. The Court will be asked approve an Opt-In form for Class members residing outside British Columbia who wish to participate in the class proceeding and an Opt-Out form for Class members residing in British Columbia who do not wish to participate in the class proceeding. The Court will be asked to set a date by when the Opt-In and Opt-Out forms are to be delivered to class counsel.

## **II. DOCUMENTARY PRODUCTION**

6. To assist the parties and the Court in efficiently managing the production of documents, the parties will exchange documents in accordance with protocols established in the July 1, 2006 Practice Direction – Re: Electronic Evidence.

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8. The Plaintiff anticipates that given the nature of the matters at issue in the class proceeding it is not reasonably practical to complete the examination for discovery of each party in less than seven hours. The Court will be asked to specify the duration of each examination for discovery pursuant to Rule 7-2(2) of the *Supreme Court Civil Rules*.

9. The Plaintiff may ask the Court for an order allowing her to examine multiple representatives of the Defendants, if necessary.

#### **IV. EXAMINATION OF NON-PARTIES**

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11. Expert Opinions shall be delivered to each party pursuant to Rule 11-6 of the *Supreme Court Civil Rules*.

#### **VI. REFINEMENT OF THE COMMON ISSUES**

12. Following certification, examinations for discovery and the exchange of expert opinions and before the trial of the common issues, the Plaintiff may ask the Court for an order to amend or further refine the common issues, if required.

#### **VII. DISPUTE RESOLUTION**

13. The Plaintiff remains willing to participate in mediation or non-binding alternative dispute resolution efforts if the Defendants are prepared to do so.

#### **VIII. READINESS FOR TRIAL**

14. Within 28 days before trial, the parties will file a Trial Certificate and hold a Trial Management Conference.

#### **IX. DETERMINATION OF THE COMMON ISSUES AT TRIAL**

15. The Class will be informed of the results of the common issues trial by publication of notice pursuant to section 20 of the *Class Proceedings Act*.

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18. If any or all of the common issues are resolved in favour of the Class, the Plaintiff proposes that a judicial management conference be held as soon as possible following judgment. At that hearing, both parties will be at liberty to make submissions regarding the methodology for resolving the remaining issues. Potential methods include references, mini-trials, mediation, arbitration or other means approved by the Court pursuant to section 27 of the *Class Proceedings Act*. At this time, the Plaintiff intends to propose a method of resolving outstanding individual issues as set out below.

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20. The Plaintiff anticipates that given the nature of the injuries suffered by class members, adjudication of the Claims would best be resolved through mini-trials with expert reports and discovery and guided by the *Supreme Court Civil Rules* for trial procedure to determine the issues of individual causation and damages.

## **XII. REVIEW OF THE PLAINTIFFS' LITIGATION PLAN**

21. The Plaintiff's litigation plan may be reviewed or modified as deemed necessary by the parties or the Case Management Judge during judicial management.

### **XIII. CASE MANAGEMENT**

22. During the litigation, regular judicial management conferences, case planning conferences and any interlocutory motions will be scheduled, as required.